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that the construction of section 44 of the constitution is sufficiently doubtful to resolve the doubt in favor of the constitutionality of the statute.' In a doubtful case it is the province of the Court to resolve all doubts in favor of the constitutionality of the statute.'

"We can declare an act of the General Assembly void only when such act clearly and plainly violates the constitution, and in such manner as to leave no doubt or hesitation on our minds." *Commonwealth v. Moore & Goodsons*, 25 Grat. 951, 953, cited in *Button v. State Corp. Com.*, 105 Va. 637. It follows from the views above expressed that there must be judgment of ouster against the respondent.

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IN THE CIRCUIT COURT OF FRANKLIN COUNTY, JUNE  
TERM, 1908.

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BROOKS *v.* BROOKS' Heirs.

**Dower—Barring or Defeating Dower—Case at Bar.**—Held, that a clause in a will "I give to Gillie my Bureau if Gillie wishes & provided she the longest liver, you all can help her while remain my widow, nothing binding upon either party," will not bar the widow of her dower in the real estate of her husband, under §§ 2270, 2271, of Code, where widow has not renounced the will in the time prescribed.

**Same—Same—By Antenuptial Agreements.**—Held, that the alleged antenuptial contract, set up as a defence in this case, will not upon its face, and the evidence produced, bar the widow of her dower in her husband's real estate.

Bill in chancery brought in the Circuit Court of Franklin County (Judge Geo. J. Hundley presiding for Judge E. J. Harvey, by appointment of the Governor), by Gillie A. Brooks against the heirs of her late husband, W. D. Brooks, dec'd, to recover dower in the real estate of which W. D. Brooks died seized and possessed.

The bill in substance sets out that W. D. Brooks, the late husband of the plaintiff departed this life on the       day of       1906, leaving a last will and testament, by which he devised his three tracks of land to his three children, respectively, (a copy of the will being exhibited) that the plaintiff had not been assigned dower in said lands, but was entitled to have same assigned her, giving names of proper defendants to the bill, and praying that Commissioners might be appointed to assign her dower, etc.

The defendants filed their answer, setting up the will, and

claiming that inasmuch as the plaintiff had not legally renounced the will in the way, and in the time, prescribed by the statute, she was barred of her claim of dower, and further alleging that the plaintiff and her husband had entered into an ante-nuptial contract which barred the plaintiff of her dower rights, etc.

The plaintiff filed a sworn replication to this answer, denying all allegations of the answer in conflict with the allegations of her bill, and especially the allegation that she had entered into an ante-nuptial contract with her husband whereby she relinquished her dower rights, or that she had entered into any ante-nuptial contract at all.

COPY OF ALLEGED ANTE-NUPTIAL CONTRACT.

*"Copy of agreement between W. D. Brooks & Gillie A.  
English. May 8, 1902."*

"We the under sign having agreed to marry each other and each party of us doth agree to enter in to a marriage contract that which ever may be the longest liver shall not have any right title or claim to the deceased property of other provided either one or the other may give verbally by conveyance any species of property they may choose during their life time to the other and it shall be valid given under our hands and seal this day above written."

Isaiah Perdue.  
J. R. Brooks.

W. D. Brooks.  
Gillie A. English.

COPY OF W. D. BROOKS' WILL.

First—I William D. Brooks being of sound mind and depositing memory do make this my last will and testament revoking all former wills.

After my death it is my desire that all of my just debts and burial expenses shall be paid.

Second—I give to my son James R. L. Brooks my tract of land known as the Hunt tract of land, I also give him my side board.

Third—I give to my daughter Permelia A. F. Mathews of the first part in her own name & right during her life time my Dillon tract of land & 4 acres some roods & some poles adjoining same on south side of the second part, after her death then to her bodily heirs if any, if none then to the next of my heirs.

Fourth—I give to my son John W. L. Brooks my home tract of land in addition thereto from corner Spanish oak on road near fresh field, then a *trait* line to mail box on public *rode* to Kesler & Brooks line.

Fifth—My desire that each one of my children shall pay a *peice* over to W. B. L. P. Kesler out of my estate \$50.00.

I give to John & Benny all my farming tools Benny & John one bed & furniture a *peice* Benny his mother Bureau, Gilly my

Bureau if Gillie wishes & provided she the longest liver, you all can help provide for her while remain my widow, nothing binding upon either party.

I constitute & appoint my son James R. L. Brooks my executor to carry said will into effect, without giving bond or security, the remainder to be equally divided among my children.

Given under my hand & signature this day above written signed & seal.

J. H. Holland  
W. B. Forbes.

W. D. Brooks.  
(Seal).

The plaintiff's depositions were taken (but were excluded by the court on the ground that the other party to the transaction under consideration was dead), in which, among other things, she stated that she had never entered into an ante-nuptial contract with her husband, and had never heard of such a contract until after her husband's death; that several days before their marriage, her husband got her to sign a paper which he told her was a certificate for their marriage license: That without reading the paper, and fully relying upon what Mr. Brooks told her, she signed it; that Isaiah Perdue and J. R. Brooks (the latter a son of W. D. Brooks) came with W. D. Brooks to her mother's home on the occasion she signed this paper, etc.

Isaiah Perdue, a witness for the plaintiff, stated in substance, that several days before Mr. Brooks married, he W. D. Brooks, came by his place of business and asked him to go with him to Mrs. Nancy English's (mother of the plaintiff) house, that he wanted him to witness a certificate to the Clerk for a marriage license, that the Clerk had promised to give him his license; that after they had gone about two miles J. R. Brooks joined them; that he (Isaiah) then recalled that he had forgotten his spectacles, and left them on the engine that he had been working on; that he told W. D. Brooks this, and told him that he could not read without his spectacles; that Mr. Brooks replied that the paper he was to witness was not of much importance, and that it would not be necessary for him to read it; that after arriving at the home of Mrs. English, Mr. W. D. Brooks went into the house and remained about 30 minutes, while he, Perdue, and J. R. Brooks staid out doors under the trees and talked with Mrs. English; that he then went in the house, and at the request of W. D. Brooks, in the presence of Gillie A. English, signed his name to a paper which Mr. Brooks requested him to sign; that before signing it he asked Mr. Brooks to read it, but he said there was no need of that as he had explained it to him what it was; that he (Perdue) not having his spectacles with him, could not read the writing himself, and that relying upon what Mr. Brooks told him about it, he affixed his signature as a witness; that this was the only paper he had ever signed at the request of Mr. Brooks,

so far as he could recall, and that he had never seen that paper since he signed it. He also stated, that he was acquainted with the lands of W. D. Brooks; that there were about 300 acres in all, and that it was worth \$5.00 or \$6.00 an acre. On cross examination he stated that after the death of W. D. Brooks, Mr. J. R. Brooks, his son, sent for him to come to his house, and when he got there, Mr. Brooks wanted him to go with a Mr. Houseman to see Gillie A. Brooks, the plaintiff in this case, and get her to sign a deed conveying and relinquishing all of her rights in her husband's lands to his heirs; that he told him he would, but afterwards, changed his mind, and did not go, and that J. R. Brooks then sent for him, and he went; that he told Mrs. Brooks (plaintiff) what the paper was, explained to her its effect, and told her if she did not claim any interest in her husband's real estate that it would be all right for her to sign it; that she refused to sign it. He stated too, that when he was at J. R. Brooks house the first time about this matter, J. R. Brooks read him a paper which he said was a copy of an ante-nuptial contract between W. D. Brooks and his wife, which witness said was like the paper filed in this suit; that he (Perdue) did not tell J. R. Brooks that that was not the paper he had witnessed—that he said nothing about it. The witness stated that he did not read the paper himself; that that was not the business that he was sent for by J. R. Brooks; and there is nothing in the evidence showing that his attention was called to the fact that he was one of the witnesses to the paper, or that he was asked whether it was the paper he witnessed.

Several witnesses for the plaintiff testified as to the good character of Gillie A. Brooks, the plaintiff, for truth and varacity, and also to the good character of Isaiah Perdue for truth and varacity. Several witnesses also testified that Gillie A. Brooks had claimed her dower interest in her husband's lands since his death up to the present time. And one or two witnesses for the plaintiff stated that Ransom Bernard, one of the defendants' witnesses who tried to get the plaintiff to sign the deed to the heirs of W. D. Brooks, conveying and relinquishing all her rights and interest in her husband's lands, told them that he was to be well paid for his services if he succeeded in getting her to sign the deed.

Several witnesses for the defendants stated, in substance, that the original paper purporting to be the ante-nuptial contract heretofore mentioned, was placed in an envelope, sealed, and put in an iron safe several days before the marriage of the plaintiff and W. D. Brooks; that after his death it was taken out by one of the sons of W. D. Brooks with the intention of having it recorded; that the copy filed in the papers of this suit was made; that one of the heirs of W. D. Brooks brought the original

to Rocky Mount, showed it to an attorney and consulted with him in regard to it; that it was torn into two pieces, and that said attorney pasted the pieces together; that it was ascertained that it could not be recorded; that it was placed in a pocket-book along with the copy above mentioned and other papers, and money; that a rat cut into the pocket-book and got it out and cut it up into small pieces, but did not bother anything else in the pocket-book it being supposed that the rat was after the paste; that the executor of the will before dividing the personal property, had announced that he was going to divide it according to the will, and asked any one who wished to object to make it known, or ever afterwards keep silent; that plaintiff was present, and made no objection; that the bureau conditionally willed to plaintiff was in the room where it had been for forty years, and has remained there ever since; that the plaintiff has kept some of her things in it, and the children of W. D. Brooks have kept some of their things in it without objection by her; that she, the plaintiff had spoken of it as her bureau since her husband's death; that after the death of her husband, his heirs told her of the ante-nuptial contract, and they, and others at their instance, tried to get her to sign a deed conveying and relinquishing to them all of her rights and interest in her husband's estate, but she refused to do so: One or two of these witnesses stated that she said if the contract and the will were sufficient to deprive her of her interest in her husband's estate there was no need of her signing any other paper—or words to that effect—and one witness said if anyone brought a suit it would not be her, or words to that effect. Several witnesses testified to the good character of W. D. Brooks. The attorney to whom the heirs showed the alleged ante-nuptial contract, testified that they showed him a paper similar to the copy filed, except he did not remember that it contained what is related in the last part of the copy, but he did not doubt in his own mind that it did; that he pasted the pieces together. He also stated that W. D. Brooks showed him a paper a short time before his marriage with the plaintiff, with his own name and the plaintiff's signed to it, purporting to be a marriage contract, and advised with him about it, but he could not say positively that the paper filed was a copy of it, but rather thought it was, etc.

There was also some evidence tending to show that during the coverture W. D. Brooks bought, or helped to buy for his wife, a colt for \$25.00, which she afterwards sold for \$75.00, also a sewing machine, and that he paid for, or helped to pay for, the reversionary interest of her brothers and sisters, six in number, after her mother's death, in a little farm belonging to the estate of her deceased father for the price of \$150.00, but this evidence was uncertain and indefinite, the witnesses not knowing of their

own knowledge how much he paid (or that he paid anything) on the land, colt, or sewing machine. If he did pay out any money in this way for his wife, there is no evidence to show that it was in pursuance of an ante-nuptial contract, or in lieu of dower.

The aforementioned deed to Gillie A. Brooks, the plaintiff, a copy of which was exhibited as evidence, is in the following words (signatures and acknowledgment omitted):

"We the undersigned heirs of George W. English, dec'd, and Nancy J. English his surviving widow, doth grant, bargain sell and convey all of our right title and interest in a certain tract or parcel of land deeded to them by Asa Dillo containing 100 acres more or less, unto Gillie A. Brooks adjoining the lands of Divers & others for and in *consider* \$150.00 the sum to be equally divided between *ech* legatee \$25.00 to each legatee we bind ourselves to defend the title to the said Gillie A. Brooks.

In testimony whereof we have this day above written the 19th day of January 1904 affixed our hands and seals, the receipt is hereby acknowledged."

N. B. The evidence also shows that after the death of her husband, the plaintiff continued to live at his home place with his children, doing the housekeeping, cooking, milking, washing, etc., they boarding her, and she making no charges against them for her services.

*L. W. Anderson*, for plaintiff.

*Dillard & Lee*, and *Herbert Dillard*, for defendant.

GEORGE J. HUNDLEY, Judge.

In this case the deposition of Gillie A. Brooks is excluded, she being an interested witness, the other party to the contract being dead. It is contended by the defendants.

First: That the plaintiff is barred from claiming her dower by reason of the fact that she has not renounced the will of her husband within the time prescribed by statute. This raises the question whether any provision is made for her in the will which was intended to be in lieu of dower. The only provision made for the plaintiff is as follows: "I give to Gillie my bureau if Gillie wishes, and provided she the longest liver, you all can help provide for her while remain my widow, nothing binding upon either party." It seems to me absurd to construe this as a provision intended in lieu of dower. She may take one old bureau if she wishes, and the children who take all the other property, personal and real, including the farms, may help her if they choose.

It is an insult to the intelligence of the man who made this will, however ignorant of letters he may be, to charge him with

intending this as a provision in lieu of dower. It is perfectly plain from the evidence in this case that her husband thought his wife had already deprived herself of dower by the ante-nuptial settlement signed by her and produced in evidence in this case.

This disposes of the first.

It is contended next that the wife has precluded herself from making this claim by signing the ante-nuptial contract, which is in evidence. I do not doubt from the evidence that she signed this contract, but I do seriously doubt whether she knew what she was signing, or ever had its contents explained to her, or understood at all what its effect would be upon her rights.

The whole case then turns upon the construction of this contract, and upon the adequacy and fairness of its provisions. It does not in terms bar claim of dower, nor can it be said to do so by necessary implication. It provides that the longest liver shall not have any right, title or claim to the "deceased property" of other, provided either one or the other may give verbally by conveyance any species of property they may choose during their lifetime, etc. Does the word property here refer to personal property or realty? Does it intend to bar the widow of dower in the realty, or does it intend to bar her of her distributive share of the personal estate? It is at least not clear, and the contract brings this case within the case of *Hinkle v. Hinkle*, a West Virginia case, reported in 11 S. E. Rep. 993. It seems clear from this case that in order to operate as a bar to dower, an ante-nuptial contract must express that intention in clear and unmistakable terms. But I prefer not to base this decision upon the subtle refinements of that case. I prefer to base it upon the broad and equitable ground that this ante-nuptial contract is not fair and just in its terms, and should be disregarded by a court of equity, even if it be conceded that the intention to bar her rights is sufficiently plain from its terms. The man was seventy years old and the woman was a young woman. The evidence shows that all she possessed was an interest in reversion in her father's estate, dependant upon the life estate of her mother who is still alive, worth not more than twenty-five dollars, whilst the man had three hundred acres of land worth at least \$1500.00, and also considerable personal property. Both, it seems, could write their names, but it is easily gathered from the testimony that both were ignorant. It is no where shown from the evidence that the contract was explained to the woman, or that she ever read it. The evidence of Isaiah Perdue, slipshod and vague as it is in some respects, shows very plainly that no pains were taken to explain it to him (Perdue) or to the woman who signed it, and renders it at least doubtful whether either knew its purport.

It is clear from the instrument itself, that this old man intended to impose himself in his old age with all his bodily infirmities,



upon this young woman without any equivalent whatever and without any consideration, except the privilege of calling herself by his name and working for him and his children. Under these circumstances it is to be presumed that he did not disclose to her his circumstances, or that he did not explain to her the paper which she signed, and it was his duty to do both. He wound up by giving to her an old bureau, and leaving her without a shelter, to the tender mercies of his children. The conclusion is irresistible that he, with the accumulated craft of seventy years, either overreached the woman, or tempted her, in her poverty, to shoulder this burden, upon the prospect of a few years support by him, intending to leave her at his death to her own resources.

This contract gave her no adequate consideration for the sacrifice of herself, her time and labor in ministering to him and his children. It is on its face unjust and unfair. They did not deal with each other at arms length, but they met on the most sacred grounds known to civilized life, where mutual confidence and the tenderest regard for the rights, the happiness and the comfort of the contracting parties should prevail, and a court of equity will refuse to enforce such a contract.